MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 3, 2017 / 2018

ULK2612 – LAW OF BANKING

(All Sections / Groups)

06 JUNE 2018

Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages with 4 Questions only.

3. Attempt **FOUR** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL copies of: (i) Bills of Exchange Act 1949 of Malaysia;
   (ii) Financial Services Act 2013;
   (iii) Anti Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001; and
   (iv) Contracts Act 1950.
   Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided. Please **highlight** or **underline** all references to cases and statutes.

QUESTION 1

Many common law and local cases have discussed and examined the relationship between a banker and an individual in order to ascertain whether the said individual is a bank's customer. With reference to relevant decided cases and statutory provisions, discuss the criteria applied by courts to determine whether a particular individual is a bank's customer.

(25 marks)

QUESTION 2

Sabrina is a boutique trader at Mewah Building, Jalan Ayer Keroh, Melaka. She has a savings account and a current account at Ayer Keroh branch of Bank Kaya Bhd. (BKB). Her savings account has RM50,000-00 and her current account has RM30,000-00 with an overdraft facility of RM20,000-00. Sabrina issued a cheque totaling RM35,000-00 to a boutique supplier named Aida. Aida deposited the cheque into her account at Bank Miskin Bhd. (BMB).

Thereafter, Sabrina issued another cheque totaling RM10,000-00 being payment of rent to the owner of Mewah Building. BKB honoured the cheque totaling RM10,000-00 but dishonoured the cheque totaling RM35,000-00 to Aida. The cheque totaling RM35,000-00 was endorsed with the words "Insufficient Funds" by BKB and "Refer to Drawer" by BMB. Aida is very angry and informed Sabrina that in future, boutique will only be delivered if the payment is settled in cash, namely cash on delivery basis. In addition, BKB deducted RM200-00 from Sabrina's current account as penalty and administrative fee for the dishonoured cheque totaling RM35,000-00.

Sabrina is angry with her bank and is embarrassed to hear Aida's stand about payment being in cash. Sabrina knows that you are an expert lawyer in banking litigation and she has appointed you as her lawyer to commence legal action against BKB. Advise Sabrina regarding her rights as a bank's customer in accordance with banking laws.

(25 marks)

Continued...

QUESTION 3

On 5 March 2016, Valley Developers Sdn. Bhd. (VDSB) obtained a loan for RM5 million from Development Bank Bhd. (DBB) secured by a third party charge (consented to by the landowners) on the land (valued at RM7.5 million) to be developed. It was further guaranteed by Ay, Be, Ce and De, the directors of VDSB jointly and severally. The loan facility was dated 5 March 2016 whilst the guarantee was dated 7 May 2016.

The project faced numerous problems and the loan was recalled. DBB sued VDSB and the guarantors for recovery of the loan plus interest and costs. On 15 September 2017, DBB obtained judgment against all parties. Meanwhile, Ay resigned as Managing Director of VDSB on 15 April 2017 and claims that he is not liable on the guarantee. Be, Ce and De claim that they were coerced into signing the guarantee by Ay and further if Ay is not liable on the guarantee then their liability should also cease. They further claim that the bank should proceed to foreclose on the charge before proceeding to recover against the guarantors.

Advise the guarantors on their liability.

(Total: 25 marks)

Answer EITHER Question 4 (a) OR Question 4 (b)

QUESTION 4 (a)

Sandy has a current account, savings account and fixed deposit accounts with Friendly Bank Bhd. (FBB). Sandy also uses FBB's internet banking facilities to purchase things online, pay for airline flight booking, hotel reservations etc. On 5 March 2018, Sandy was going through her online statements and she noticed that there had been regular transfers of various sums of money from her current account between the period September 2016 to March 2018. Sandy rechecks her accounts and is sure that someone has hacked into her account and withdrawn the money. She estimates the total sum of withdrawals to be RM 12,000-00. She immediately reports the matter to the bank and lodges a police report. FBB denies liability as their records show that all fund transfers and payments were made using Sandy's identification numbers and digital signature.

(i) Advise FBB on its liability towards Sandy.

(15 marks)

(ii) What recourse may Sandy pursue if FBB deny liability?

(10 Marks)

(Total: 25 marks)

Continued...

OR

QUESTION 4 (b)

Senses Sdn. Bhd. (SSB), a customer of the Commerce Bank Bhd. (CBB). SSB claims that between 2016 and 2018, CBB had paid out 173 cheques totalling RM250,000 ('the cheques') purported to be drawn by the authorised signatories of SSB which were debited into SSB's current account with CBB. According to SSB, it did not draw the said cheques or authorise the drawing thereof, and that the signature on those cheques was not of any one of its authorised signatories and was forged. It was suspected that the cheques were forged by the SSB's former employee, Ms. Sly, working together with an employee of CBB. However, CBB denies any liability as it had supplied monthly account statements which had not been queried or disputed by SSB.

Advise CBB on its possible liability towards SSB.

(Total: 25 marks)

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